IN THE

Supreme Court of the United States

No. 525

October Term, 1949

ORIN C. CLEMENT,

Petitioner,

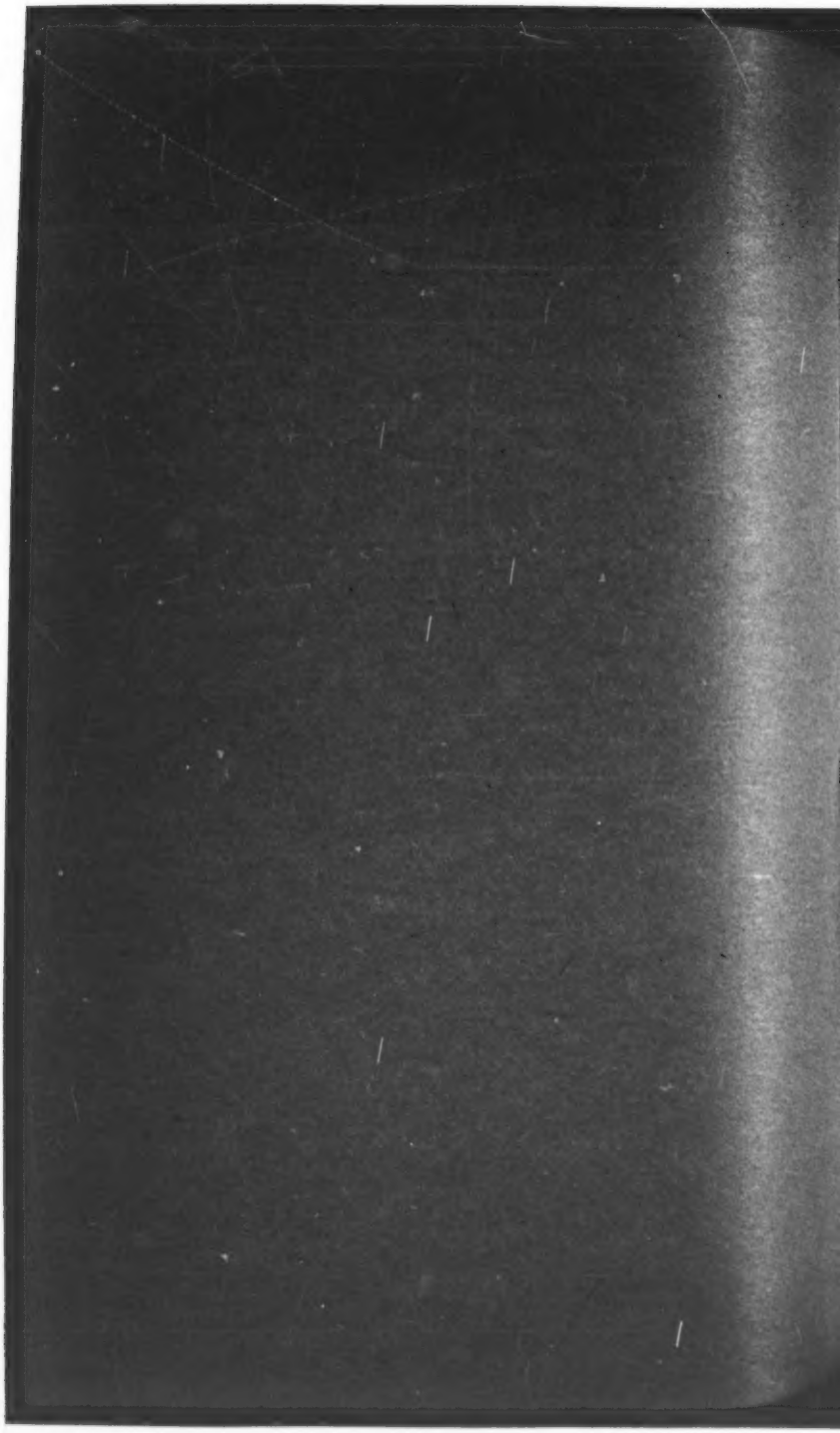
vs.

THOMAS E. WOODS, HOUSING EXPEDITER,
OFFICE OF HOUSING EXPEDITER,

Respondent.

PETITION FOR RE-HEARING AND RE-CONSIDERATION OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ORIN C. CLEMENT,
302 Columbia Street,
Toledo, Ohio.
Attorney for Petitioner.



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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Orin C. Clement, respectfully submits that he is aggrieved by the Court's denial, on March 13th, 1950, of his petition for a *writ of certiorari* to the United States Court of Appeals for the Sixth Circuit to review and examine the order of the Court of Appeals for the Sixth Circuit, which affirmed the interlocutory order of the trial court, and prays for a re-hearing and re-consideration of said petition.

I

Petitioner is not advised of the reason or reasons for the denial of the petition for a *writ of certiorari,* but submits to this Honorable Court that whatever these reasons were and are they cannot surmount the inescapable fact and conclusion that, by this interlocutory order, petitioner has been and is deprived of his right to sell his property according to his will. He sold by a method legal in Ohio. At the instance of the respondent he was stopped by the interlocutory order of the trial court.

In his petition-brief, and in his reply brief (filed March 9, 1950, timely, it is hoped, to have received the Court's consideration), petitioner asserts the unconstitutionality of any restraint on his right to sell and dispose of his property, and he has no intention of here rehashing and restating the fundamental principles and the argument there presented.

He does, however, direct the Court's attention to the fact that Congress, long ago, saw fit to recognize, strengthen and further protect these constitutional safeguards and rights in enacting the Civil Rights Act of April 9th, 1866, 8 U. S. C., Sec. 41, 42:

> "41. Equal rights under the law. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R.S. 1977.
>
> "42. Property rights of citizens. All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens

thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. R.S. 1978."

These are plain, unambiguous, specific provisions of law, and enacted by Congress to carry into effect the Fourteenth Amendment adopted in 1868, establishing the equality of rights of all citizens, and, while it was designed primarily to secure to the colored race the rights, privileges and responsibilities of citizenship, it, at the same time, placed the stamp of nullity on every law, ordinance and regulation which abridged the principles and immunities granted by the Constitution. *Twining vs. New Jersey,* 211 U.S., 78; *Palko vs. Connecticut,* 302 U.S., 319; *Adamson vs. California,* 332 U.S., 46.

These constitutional privileges and immunities are the wards of this Court, which, as the interpreter of the Constitution, guards the beneficiaries thereof against unlawful encroachments. That responsibility and duty, this Court will always meet with appropriate action to safeguard those rights. In recent years, civil rights questions have frequently been before the Court and, while by far the greater number of them have involved racial questions, yet all were concerned with constitutional privileges and safeguards which apply alike to all persons and all citizens. *Betts vs. Brady,* 316 U.S., 455; *Turney vs. Ohio,* 273 U.S., 510; *Corrigan vs. Buckley,* 271 U.S., 325; *Hill vs. Texas,* 316 U.S., 400.

In *Hill vs. Texas, supra.,* where the court had under consideration trial procedure as affecting equality of rights, the Court, in concluding the opinion at page 406, said:

> "But it is our duty as well as the State's to see to it that throughout the procedure for bringing him to justice he shall enjoy the protection which the Constitution guarantees. Where, as in this case, timely

objection has laid bare a discrimination in the selection of grand jurors, the conviction cannot stand, because the Constitution prohibits the procedure by which it was obtained. Equal protection of the laws is something more than an abstract right. It is a command which the State must respect, the benefits of which every person may demand. Not the least merit of our constitutional system is that its safeguards extend to all—the least deserving as well as the most virtuous."

Moreover, recently the Court has had under consideration the Civil Rights Act in *Hurd vs. Hodge*, 334 U.S., 24, and *Shelley vs. Kraemer*, 334 U. S., 1, and in the *Hurd* case, at page 34, recognizes the need for this Court, if necessary, exercising its power of supervision and correction, where there is involved so vital and important questions as the infringement of rights plainly protected by the provisions of the Civil Rights Act.

Obviously, it is the duty of the Court in this cause to see to it that the protection which the Constitution guarantees petitioner in selling and disposing of his property is not nullified by procedure which not only departs from the usual course of judicial procedure, but which is based on non-existent facts and the law applicable to those non-existent facts, rather than on the law applicable to the issue on which the action is predicated.

Here, the finding of evasion is attributable directly to the erroneous and unlawful procedure of the trial court. Had the proceedings been conducted in the usual course, in proof of the claim of evasion, a different finding would have resulted. Where, as in this case, there are completely integrated contracts for the sale of housing accommodations, evasion cannot be sustained, because the Constitution protects petitioner in his right to dispose of property in any way legal under the laws of Ohio. By the Civil

Rights Act, the Congress has assured him and all persons and citizens that they may demand the protection of those rights.

Constitutional provisions and safeguards may not be nullified and made ineffective by resorting to some novel and extreme and, at the same time, unlawful plan of judicial procedure, as was done in this case, on findings of unrelated and non-existent facts, to establish, as renting, certain contracts for the sale of real estate, recognized by the laws of Ohio and widely used in making sales of real property.

These are the elements which have produced the court's order, which prevents petitioner from selling his housing units, and is plainly in violation of the provisions of the Civil Rights Act. They present, for determination, the application of the Civil Rights Act to these findings and proceedings, originating in the trial court and sanctioned by the Appellate Court. They involve directly the question of petitioner's protected civil rights to dispose of his property, and clearly and plainly are these matters for the consideration of this Court, and the Court of Appeals having refused to give consideration to these questions, it is only through the medium of this Court's action and power of supervision that these civil rights may be protected.

II

While the petition here seeks this Court's review of the affirmance by the Court of Appeals of an interlocutory order, the fact that it is interlocutory should not, under the circumstances of this case, prevent its review here. The Court of Appeals refused to consider the merits, on the erroneous ground that on an appeal from an interlocutory order, the discretion of the trial court would not be disturbed, and failed and refused to recognize the want

of any discretion in the trial court, since the sole question before that court was a question of law—the determination of the legal status of these contracts with reference to evasion. It was the duty of the Court of Appeals to afford a real review and examination. The refusal of the Court of Appeals to consider the cause on the merits, as disclosed by the record, has defeated the purpose of this appeal from the interlocutory order, as provided by Judicial Code Sec. 129 (28 U.S.C.A., 227), when it should have been given precedence in the Court of Appeals and reviewed in June, 1949. It was brought to the attention of the Court of Appeals that petitioner herein (appellant there) claimed the lack of any authority or jurisdiction over the subject matter of these contracts, and that the injunction was an unlawful interference with his constitutional right to sell property. This is a vital and important question involving important legal and constitutional rights, fraught with financial losses, and *the reason why* the appeal was taken. He has a legal right to a review, and he has not had it.

Petitioner realizes that the Supreme Court is absolved from the duty of concerning itself with distinctly private interests, and that questions involving such are, as they should be, principally the responsibility of the Court of Appeals. The Court of Appeals could have resolved the questions involved and doubtless foreclosed the necessity of coming to this Court with this petition, but, having failed in that respect to give appellant the review allowed and provided by law, it surely is the duty of this Court to exercise its power of supervision and correction, to the end that the statutory review be afforded in this cause, and that a determination be made in accordance with the rules of substantive law.

As has been well said, technical advantages have no

place in the federal system of appellate review, and it seems to be the duty of the Supreme Court to exercise, if necessary, its power of supervision, to prevent any technical advantages obstructing the review provided by law and applicable to this cause.

Involved here, however, are the fundamental constitutional rights of this petitioner, and these rights cannot be invaded or transgressed by the application of unlawful and inapplicable principles of interpretation of legal instruments. In the end that constitutional questions cannot be separated from this cause and, as hereinbefore brought out, is one of the rights protected by the Civil Rights Act and is a question for the final determination of this Court.

III

Petitioner seeks this Court's review at this time to save time and expense attending further litigation. A trial on the merits and another appeal will bring up a record substantially the same as is now before the Court, at great cost of time and money.

The record before the Court is sufficient to enable the Court to pass upon the entire cause, including two minor claims not included in this appeal and which petitioner claims are without equity and on which there can be no recovery.

It is well established that the court, on appeal on an interlocutory order, may direct the complaint to be dismissed, if it appears from the pleading and the record that the plaintiff was not entitled to maintain his action, or insurmountable obstacles intervened. *Smith vs. Vulcan Iron Works*, 165 U. S., 518; *Mast Foos & Co. vs. Stover Manufacturing Company*, 177 U. S., 485; *Decker vs. Independence Shares Corporation*, 311 U. S., 282.

PRAYER

Wherefore, and for other reasons appearing and set forth in the petition-brief and petitioner's reply brief, hereinbefore filed, petitioner respectfully urges a re-hearing and re-consideration of the petition filed herein, or, in the alternative, that the cause be reversed and remanded to the Court of Appeals for the Sixth Circuit, with appropriate and proper instructions, to the end that a real examination and review be had in this cause, in the light of petitioner's constitutional rights as they are protected by the plain provisions of the Civil Rights Act, and for such other and further relief as the Court may deem proper under the circumstances.

Respectfully submitted,

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302 Columbia Street,
Toledo, Ohio.
Attorney for Petitioner.

I, Orin C. Clement, petitioner herein, certify that, in my opinion, the foregoing petition for re-hearing in the case of *Clement vs. Woods,* No. 525, October Term, 1949, is well founded and is not presented for the purpose of creating a delay, but for the purpose of bringing to the Court's attention the important and vital question of his rights under the Constitution of the United States and under the Civil Rights Act enacted by Congress.

ORIN C. CLEMENT,